



SUCCESSION

- Stay of execution pending appeal.

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
SUCCESSION CAUSE NO. 119 OF 2003

IN THE MATTER OF THE ESTATE OF THE LATE M'MIRITI M'ATUNE (DECEASED)

NKIROTE M'MIRITI PETITIONER

VERSUS

FRANCIS KITHINJI OBJECTOR

RULING

Francis Kithinji (objector) has filed summons dated 14th December 2010. By that summons he seeks stay of judgment of this court delivered on 22nd October 2010. He seeks stay pending the determination of his appeal in the Court of Appeal. He seeks to stay the transfer of the deceased property as per the grant confirmed in the said judgment. The basis of seeking the orders of stay is as stated in his affidavit that he has high chances of success in his appeal. He also deponed that he has received threats of eviction from the properties of his estate. The estate comprises of the following properties:-

- 1) *Abothuguchi/Kariene/266*
- 2) *Abothuguchi/Kariene/161*
- 3) *Abothuguchi/Kariene/1742*
- 4) *Abothuguchi/Ruiga/1252*
- 5) *Plot No. 4B-Gatimbi Market*

The objector stated in his affidavit in support of his application thus:-

“That I have extensively and intensively developed the land which I occupy and I am therefore apprehensive that if the petitioner executes the threats she has been issuing, I stand to suffer irreparable loss and damage of which can (sic) never adequately compensated (sic) with costs.”

The deceased was survived by the following:-

- 1) *Nkirote M'Miriti - widow*
- 2) *Milliam Ncece – daughter (married)*
- 3) *Esther Gaceri* “ “
- 4) *Mary Kanana* “ “

- 5) *Priscilla Kithira* “ “
- 6) *Stella Kagure* “ “
- 7) *Francis Kithinji* *Son*

The objector as can be seen from the above list was not the only beneficiary of the estate of the deceased. Since the deceased died intestate and because the court had not made a determination on who was to inherit the estate of the deceased the objector fails to clarify why he would occupy and develop the whole estate of the deceased to the exclusion of the other beneficiaries. I have considered the affidavit of the objector and that of the petitioner and I find no basis for the orders that are sought in the summons dated 14th December 2010. That application is dismissed with costs being awarded to the petitioner.

Dated, signed and delivered at Meru this 13th day of April 2011.

MARY KASANGO
JUDGE